SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 464

L. W. HOLT, ET AL., PETITIONERS,

vs.

VIRGINIA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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[fol. 5] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL, VIRGINIA

In Re: E. A. Dawley, Jr.

In Re: L. W. Holt

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR—
Filed March 30, 1962

Now come E. A. Dawley, Jr. and L. W. Holt and give notice of appeal from the judgment of this Court entered January 30, 1962 (which was duly excepted to), adjudging them guilty of contempt of court and sentencing them to pay a fine of $50.00, and set forth the following assignment of error:

The Court erred in:

1. Ruling that the Motion for Change of Venue was contemptuous of the Court, that Dawley was guilty of contempt of court in filing said motion, and that Holt was guilty of contempt of court in reading said Motion for Change of Venue.

2. Not disqualifying said Carlton E. Holladay from presiding over the said contempt proceedings, in which the conduct of the court was in question, and in permitting said Judge Carlton E. Holladay to preside over said trial.

3. Entrapping L. W. Holt by inviting and requesting said Holt to read and argue said Motion for Change of Venue and then adjudging him guilty of contempt for responding to said request and invitation.

4. Denying to Dawley and Holt the right to counsel and the opportunity to assert a defense to the said contempt charge.

5. Summarily adjudging Dawley and Holt guilty of contempt of court and in sentencing them to pay a fine of $50.00.

6. Failing and refusing to set forth with sufficient specificity, definiteness and certainty, the offense alleged to have been committed by Dawley and Holt.

E. A. Dawley, Jr., L. W. Holt.

* * * * * * *

[fol. 8]

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL, VIRGINIA

In Re: E. A. DAWLEY, JR.

MOTION FOR CHANGE OF VENUE—Filed January 19, 1962

Now Comes the Defendant, E. A. Dawley, Jr., and represents as follows:

* * * * * * *

3. That the said Judge Carlton E. Holladay, who presided as Judge in said libel suit, and who fails and refuses to disqualify himself as Judge in the pending trial of the Defendant, E. A. Dawley, Jr., has, with respect to said contempt action and is now in effect and/or in fact acting as [fol. 9] police officer, chief prosecution witness, adverse witness for the defense, grand jury, chief prosecutor and judge.

4. That in addition to the foregoing, said Judge Carlton E. Holladay did intimidate and harass and is intimidating and harassing the lawyer representing said E. A. Dawley, Jr., viz, Leonard W. Holt, Esq., the effect of which is to seriously hamper the efforts of said Leonard W. Holt in defending the said E. A. Dawley, Jr.; that said harassment and intimidation arises out of and is connected solely with said Leonard W. Holt's participating in the defense of said

E. A. Dawley, Jr. in the contempt action; that part of said harassment and intimidation occurred at a hearing of this contempt action in the Hopewell Circuit Court on January 8, 1962, at which hearing the said Carlton E. Holladay revealed that he had been making an independent investigation and inquiry of Mr. Holt's conduct in this contempt defense, and said Judge at said place and time made the statement that he would "deal with" said Leonard W. Holt after he, the judge, had dealt with said E. A. Dawley, Jr.

• • • • • • •

E. A. Dawley, Jr.

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL, VIRGINIA

[File endorsement omitted]

In Re: E. A. DAWLEY, JR., and L. W. HOLT, Attorneys—Contempt.

JUDGMENT—January 30, 1962

It appearing to the court that in the hearing in the premises of the rule against the defendant, E. A. Dawley, Jr., for contempt, this day heard, that the said E. A. Dawley, Jr. [fol. 10] and L. W. Holt, both practicing attorneys before this court, did in writing, representation and action commit a contempt against this court, and in this court, and before the bar of this court, as duly disclosed by the record in that said case which has been duly taken down and recorded, are accordingly found to be, and held, in contempt of this court, and each is fined the sum of Fifty Dollars, summarily, by the court for such contempt, and to the action of the court in finding and holding the said E. A. Dawley, Jr. and L. W. Holt, guilty of said contempt, they each excepted.

On motion of the said defendants for a suspension of the execution of the said fine herein imposed against them for contempt, in order that they may each appeal to the Supreme Court of Appeals of Virginia, the court doth suspend execution of said fine for a period of sixty days for this purpose upon the said defendants executing a good and sufficient bond in the penalty of Two Hundred Fifty Dollars, with surety to be approved by the Clerk of this court, and conditioned and payable according to law.

Said bond in each case having been this day duly executed, execution of said fine is hereby suspended in each case for a period of sixty days to permit application for, or perfection of, said appeal.

Thereupon each of the said parties were released from custody upon his respective bond as hereinabove recited, and upon the conditions aforesaid.

Carlton E. Holladay.

• • • • • • •

[fol. 13]

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL, VIRGINIA

In Re: E. A. DAWLEY, JR.

In Re: L. W. HOLT

STATEMENT OF FACTS AND INCIDENTS OF TRIAL—January 30, 1962

1. On the 5th and 6th days of October, 1961, a law suit styled "*Hopewell News, Inc., Plaintiff* v. *Curtiss Harris et als., Defendants*" was tried in the Circuit Court of the City of Hopewell, Virginia, in which trial Judge Carlton E. Holladay presided, and the Defendants were represented by E. A. Dawley, Jr., an attorney at law qualified to practice in Virginia.

2. During the course of the aforesaid trial, subpoenas were issued on the 5th and 6th days of October, 1961, for the appearance on those days of the defendants, but said defendants could not be found by the City Sergeant to be served with said subpoenas. There were 12 defendants, when they could not be found the sergeant reported the fact and other subpoenas were directed by the court to be issued in the presence of E. A. Dawley, Jr. and the case carried over to the next day at 10 o'clock, at which time the sergeant again reported that the witnesses could not be found.

3. Thereafter, on October 6th the above case was dismissed agreed and a final order of dismissal was entered by the Court. While the order was being prepared Curtis W. Harris, appeared in the Court Room and conferred with his counsel E. A. Dawley, Jr.

4. After the order of dismissal was entered by the Court, Judge Carlton E. Holladay asked Dawley whether he, Dawley, had anything to do with the said witnesses being unavailable to be served with subpoenas, which question Dawley failed to answer. Although propounded to him three times, and requested the court to give him time to consider his answer, which the Court did, and directed him to appear on December 11, 1961, at 10 o'clock A. M.

The Court explained to him that the purpose of the questions was to ascertain whether or not the processes of the court—the service of the subpoenas for the witnesses had been thwarted or interfered with by his counsel or advice.

5. On December 11, 1961, said Judge Holladay issued a rule against Dawley requiring him to appear on January 8, [fol. 14] 1962 and show cause why he should not be held in contempt of Court for his refusal to answer said question, but said rule was not served on Dawley until after January 8, 1962.

6. On December 27, 1961, Dawley filed a motion requesting that Judge Holladay disqualify himself from acting as Judge in said contempt proceedings, a copy of said motion is attached hereto, made a part hereof and labelled Ex-

hibit A. On December 28, 1962, Judge Holladay overruled said motion and refused to disqualify himself.

7. On January 5, 1962, Judge Holladay was subpoenaed at the request of Dawley to testify as a witness on his behalf at said contempt trial.

8. Because Dawley had not been served with the said Rule to Show Cause prior to January 8, 1962, the trial date was rescheduled for January 30, 1962. His former attorney Leonard W. Holt stating at that time that he did not then represent him, and Dawley having not appeared.

9. On January 17, 1962, Dawley filed *pro se* a motion for a change of venue, said motion being attached hereto, made a part hereof and labelled Exhibit B.

10. On January 24, 1962, Dawley filed a civil complaint in the U. S. District Court for the Eastern District of Virginia at Richmond against said Judge Holladay et als. praying that Judge Holladay be enjoined from taking any further proceedings in said contempt action on the grounds that Dawley's rights under the Fourteenth Amendment to the U. S. Constitution were being violated by the conduct of said Judge Holladay.

11. That on January 30, 1962, the contempt trial came on for hearing, at which trial L. W. Holt, an attorney at law qualified to practice in this Commonwealth, represented Dawley; Judge Holladay presided. After hearing argument on motions the case was continued.

(Deleted by the Court. C.E.H., Judge. See Transcript of record hereto attached and made a part hereof. C.E.H., Judge.)

13. That immediately after sentencing, objection and exception was made by Dawley and Holt to the said actions of the court as being a denial of due process and equal protection of law under the Fourteenth Amendment to the United States Constitution and being contrary to the law and the evidence.

14. As corrected and amended and supplemented by the [fol. 15] transcript of the evidence made by Nancy W. Raiford, and hereto attached this record, statement and transcript of the oral testimony, facts and incidents of trial are signed.

....., Judge.

Ligon L. Jones, Commonwealth's Attorney.

E. A. Dawley, Jr., L. W. Holt.

Tendered to me this 30th day of March, 1962. The Court refuses to sign as tendered, the same being inaccurate, incomplete, and not a true manuscript or statement of the evidence, testimony facts and proceedings and incidents of the trial. The statement of the facts and incidents of the trial as set out in the hereto attached transcript made by Nancy W. Raiford are expressly made a part of the transcript of the record, testimony and incidents of trial in this matter and are to be read as a part hereof.

Carlton E. Holladay, Judge.

....., Judge.

Signed by me as amended and supplemented this 10 day of April, 1962.

Carlton E. Holladay, Judge.

The original statement of fact and incidents of trial are objected to as not being correct. The amended statement as modified by the court is agreed to.

Ligon L. Jones, Comm. Atty. City of Hopewell
4/10/62.

[fol. 16]

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL, VIRGINIA

In Re: E. A. DAWLEY, JR.

In Re: L. W. HOLT

Transcript of Trial—January 30, 1962

PRESENT: Honorable Carlton E. Holladay, Judge, Mr. Ligon L. Jones, Attorney for the Commonwealth, Mr. L. W. Holt, Attorney, Mr. E. A. Dawley.

The following is a transcript of the testimony, facts and incidents of so much of the trial and proceedings against E. A. Dawley, Jr., as pertain to the proceeding wherein E. A. Dawley, Jr., and L. W. Holt were summarily adjudged to be in contempt of court, attached and fined on January 30, 1962.

Transcribed by: Nancy W. Raiford, Ivor, Virginia.

• • • • • • • —Denotes portions of dicta belts not transcribed as indicated above.

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The Court: There is one question that I would like to ask Mr. Holt. Mr. Holt, on the date of the previous hearing, which would have been—

Mr. Jones: December 11th, I believe, Judge.

The Court: The first one ahead of that, on October 10th.

On that date you appeared as counsel for Mr. Dawley in the proceeding that was here. In other words, as the record shows in that case, Mr. Dawley had been asked this question concerning whether or not he had any part in the witnesses not making themselves available for service of process which had been issued in court in this Newspaper case.

You appeared at that time and the case was set for December 11th, and I asked you how about December 11th. Mr. Holt said this would be acceptable, "may we at this time except to the record," etc.

Then on December 11th you appeared here and I have before me at the present time a transcript of the record on that. Do you have a copy of the transcript of the record concerning your representation of Mr. Dawley?

Mr. Holt: No, I don't.

The Court: I would like for you to read it. There are two here. Get a copy from the Clerk.

It appears that you represented Mr. Dawley on the 11th of December and that in this record we concluded the trial of another case and the Court said in there: "You have another matter here today" and you said "I have no other matter."

The Court: You have the matter of the Rule against your partner.

[fol. 17] Mr. Holt: I respectfully differ from the Court. The only persons I was supposed to represent here today I represented, sir." To which the Court responded: "Of course, I am not in the position at all and will not say that Attorney Dawley is represented by you. I know that you represented him when he appeared here once before. Is it your position then that first you asked that the case be set this date? The date of December 11th was given you at your request as counsel for Attorney Dawley as the date that the rule would be heard.

"Now do you continue in your representation, or do you withdraw from your representation?

"Mr. Holt: I am not authorized to represent anybody other than the persons I represent.

"The Court: I take it then that you do not represent him.

"Mr. Holt: That is correct.

"The Court: Now the Court does not wish to be faced with a situation where you have appeared before representing him and then at a future time come back and say you do when you say now that you do not represent him. Are you out of the case?

"Mr. Holt: I am out of the case at this moment, if there is a case.

"The Court: The Court accepts your statement on that—that you are out of the case."

Then, Mr. Holt, you have appeared here again this morning in the case.

Mr. Holt: The Court has posed to me a question. I have checked the record. Would you state the question to me again?

The Court: I don't think the question needs to be stated again. It is just a question that you were in the case on December 11th—I mean October 10th. You had it set for December 11th. On December 11th you said you were not in the case, that you did not represent Mr. Dawley, and I thought that we made it very plain that you were out of it; and this morning you come back and appear in the case after the Court told you that it would not like to be faced with a situation in which you later appeared in the case after having stated you were out, and just your explanation of the situation.

Mr. Holt: All right, sir. We are prepared at this time to give an explanation.

If you will refer to the record, it is indicated that it was asked Mr. Jones to issue a rule and have it served on Mr. Dawley, or in words of substance.

[fol. 18] To the best of my knowledge no such rule was served on Mr. Dawley before the 11th of December.

Mr. Dawley indicated to me that since he had not been served he assumed the matter had been abandoned and that I was not to represent him. If something did occur, when the matter came up, I was not to appear for him.

So based upon this, I think the Court is well aware of a situation that you can be employed by someone in one second and discharged by them in another second.

That is, as I recall it, the situation. I was not in a position to make representation or statements on behalf of anyone other than the client that I had been representing, and I would say that in my opinion had the rule been served on Mr. Dawley prior to the 11th, that it may well have been

that the representation, subsequent hiring and firing would not have occurred.

I think it is also by failure of the rule to be served that that assumption was made that the matter was being dropped (The last part of this sentence was not loud enough to be transcribed.)

The Court: The Court will take this situation under advisement until the other matters are disposed of.

Let the record show that the consideration of it, and disposition of it by the Court, will be postponed until such time as the rule against Mr. Dawley is disposed of.

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Mr. Holt: Your Honor, in the light of the statement just made by the Court, an extensive consultation has to take place again. I don't want to impose upon the Court.

Perhaps if it serves the convenience of the Court, perhaps we can take the lunch break and in light of the statements made—

The Court: Well, maybe there are some other matters that we could take up here. I will give you ample time to consider it, but there are some other matters that we should take up here.

I believe you all have a plea filed here for change of venue?

Mr. Holt: Yes, sir.

The Court: I'm ready to hear you on that.

Mr. Holt: May it please the Court, the defendant, E. A. Dawley, Jr., represents as follows on motion for change of venue:

[fol. 19] The rule to show cause in this issue alleges that the alleged contempt has a background which arose out of a law suit styled Hopewell News, Incorporated, a newspaper, *versus* Curtis Harris and others, and this law suit was tried in the Circuit Court of the City of Hopewell, Virginia, on the 5th and 6th days of October, 1961, at which trial his honor Judge Carlton E. Holladay presided.

The law suit I just referred to, Hopewell News *versus* Curtis Harris, involved the following facts:

The Reverend Curtis Harris and eleven other freedom fighters, by that I mean persons interested in changing the obnoxious pattern of racial segregation and racial discrimination which exists in the Hopewell community, who were alleged members of the Hopewell Improvement Association, an organization dedicated to introducing some measure of democracy and fair-play in the City of Hopewell and active in efforts to eliminate racial discrimination against Negroes in that city.

The additional facts involved in the case were that the Hopewell News is the only newspaper in the City of Hopewell, Virginia, and it has been extremely critical of the efforts and activities of the defendants in the suit of *Hopewell News versus Curtis* and their efforts towards eliminating racial discrimination. And the newspaper, The Hopewell Newspaper, has written many articles condemning the actions and program of the Hopewell Improvement Association.

(C) That on or about September 13, 1960, the Hopewell News brought a suit against the members of the Hopewell Improvement Association for the sum of $45,000 alleging that said members of the Improvement Association have committed libel against it in a leaflet alleged to have been distributed by the members taking issue with the newspaper's point of view.

(D) That had this suit been successful, the obvious and only effect of it would have been to destroy and break the back of the Hopewell Improvement Association and deprive the Negroes in Hopewell of an effective fighting force for their rights, and the further effect of it would have been to unduly enrich the Hopewell News.

(E) That during the course of the litigation of *Hopewell News versus Curtis Harris and others* the Hopewell News continuously printed in its newspaper articles, stories and propaganda concerning the controversy and on at least two [fol. 20] occasions it printed the entire defensive pleadings and counter-claims of the defendants, all for the purpose of securing community-wide support for their side of the con-

troversy and the community-wide disapproval of the members of the Hopewell Improvement Association's side of the controversy.

(F) In addition to this that radio stations also carried extensive coverage of the litigation and the nature of which coverage was to the prejudice of the defendants' side of the controversy. By that I refer to the Hopewell Improvement Association. That the Hopewell News carried extensive coverage of the fact that E. A. Dawley was rendering, had rendered assistance to the members of the Hopewell Improvement Association in defending itself against this said suit by the newspaper and coverage was given to this fact before and after the libel suit terminated; that because the Hopewell Improvement Association and its members successfully resisted destruction and the attempt to burden it with $45,000 judgment, certain reactionary forces in the Hopewell community became and are frustrated in their hopes and desires; that the said Honorable Judge Carlton E. Holladay, who presided in the libel suit and who now fails and refuses to disqualify himself as judge in the contempt trial of the defendant, E. A. Dawley, Jr., has with respect to said contempt action, and is now in effect and/or in fact acting in the capacity of police officer, chief prosecution witness, adverse witness for the defense, grand jury, chief prosecutor and judge; that in addition to the foregoing the said Judge Carlton E. Holladay did intimidate and harass the lawyer representing E. A. Dawley, Leonard W. Holt, Esquire, the effect of which is to seriously hamper the efforts of said Leonard W. Holt in defending the said E. A. Dawley, Jr.; that said harassment and intimidation arises out of and is connected solely with Leonard Holt's participation in the defense of E. A. Dawley in the contempt action; that part of the harassment and intimidation occurred at the hearing in this matter on January 8, 1962, at which time the Court revealed that it had been making an independent investigation and inquiry of Mr. Holt's conduct and of the contempt offense. The Judge said that he would deal with Leonard Holt after he had dealt with E. A. Dawley.

The defendants in the libel suit had been subpoenaed by the prosecution to testify in the prosecution's behalf against E. A. Dawley, Jr., in the contempt trial; that since these witnesses have been subpoenaed, members of the police department of the City of Hopewell have called upon these witnesses at their homes and places of business on at least two occasions to harass and intimidate them; that the Clerk [fol. 21] of this court, Mr. J. Hamilton Hening, and the Commonwealth's Attorney, Mr. Ligon Jones, who are acting as such in this contempt case, have participated in and have knowledge of the aspect of the events and facts involved in this controversy other than in their official capacity.

The said J. Hamilton Hening, Clerk, has previously testified in the case as a witness on behalf of the prosecution. Ligon Jones has previously participated in a case prior to his becoming counsel of record for the prosecution. Both of the parties have been subpoenaed as witnesses in this case. Both have refused to disqualify themselves. Judge Carlton E. Holladay has refused to disqualify them from participating in this case as Clerk and Commonwealth's Attorney; that the accused, E. A. Dawley, is a member of the Negro race.

MOTION FOR CHANGE OF VENUE

(9) The numerous boycotts, pickets and demonstrations have been carried on in the City of Hopewell, Virginia, and the newspaper and radio stations have alleged that the Hopewell Improvement Association was responsible for the boycott, picketing, and demonstrations and have connected Dawley with the foregoing activities and the foregoing Hopewell Improvement Association, and in the minds of the general public in Hopewell, Virginia, and the general public in Hopewell, Virginia, believe that the Hopewell Improvement Association is responsible for the said activities and that E. A. Dawley, Jr., is connected with said activities and associations; that because of the foregoing facts and circumstances, among others, E. A. Dawley cannot get a fair trial in the City of Hopewell, Virginia; that local prejudice is of such a nature, character and degree that it prevents

a fair and impartial trial from being had in Hopewell, Virginia; that the white people of Hopewell, Virginia, are so greatly aroused against E. A. Dawley that it is probable that he will not obtain a fair trial in the City of Hopewell, Virginia, wherefore, for the foregoing reasons, among others, E. A. Dawley moves that the venue of this trial be changed from the City of Hopewell, Virginia, to some other circuit or corporation court sufficiently remote from the City of Hopewell, Virginia, to secure a fair and impartial trial; and I call the Court's attention to the motion —written motion—which was filed on the 17th day of January, 1962, and there is appended thereto affidavit executed by E. A. Dawley and properly notarized and that copies of this have been delivered to the Commonwealth's Attorney.

Your indulgence, please.

At this time, may it please the Court, we tender to the Clerk of the court, Mr. Hening, the original, and to the Com-
[fol. 22] monwealth's Attorney, Mr. Ligon Jones, a copy of an affidavit in support of the motion just made.

The Court: Do you have a copy of that for the Court?

Mr. Holt: May the Court use the Clerk's copy, please? That is our presentation.

The Court: As I understand it, you have filed a copy of the motion you substantially made in the record in the case here. I believe you read from that?

Mr. Holt: That is correct.

The Court: And it is signed by Mr. Dawley?

Mr. Holt: That is correct, sir.

The Court: Under his affidavit, and you appeared, of course, as representing Mr. Dawley in the matter here today?

Mr. Holt: I don't understand the nature of the question, sir.

The Court: I notice that the pleading was filed apparently in person rather than by you as counsel.

Mr. Holt: Well, it was signed by him. I think we have this situation, and the Court is well aware that he, under the Constitution of the United States, and Virginia, has the right to sign pleadings in his own behalf.

The Court: I was just merely asking—I saw it was signed by him there and not signed by you as counsel, but you appeared here today as counsel.

Is that correct? You have argued the motion. I understood that you appeared as counsel.

Mr. Holt: I think that's what I have done, sir. It's before the Court.

The Court: Before the Court. May I ask a further question here.

You have read, of course, that he cannot get a fair and impartial trial.

Of course, the issue is still pending as to whether or not he will be tried by jury or by the Court. Do you wish to elaborate on that? I'm not asking that you do. I just want to know what you—just if you do—If you want to elaborate on it, I would like to give you an opportunity. If you don't, why it is perfectly all right.

Mr. Holt: I'm not—May I respectfully—You see—Elaborate on it yet—I have some trouble hearing sometimes, sir.

The Court: On the motion for change of venue, does that apply whether your client would be tried before a jury or before the Court? Does it apply in both cases?

Mr. Holt: We say it would apply.

The Court: Apply in both cases.

[fol. 23] At this time I might say that I do not see how that this Court can pass unnoticed the matters and things that have been presented to the Court by Mr. Dawley in a plea filed in the Court and presented here in Court and by Mr. Holt as his counsel and argued in court. I think that the plea is contemptuous, I think the argument is contemptuous.

At this time both E. A. Dawley, Jr., and Leonard W. Holt are held and adjudged summarily to be in contempt of this Court.

I will take under advisement the punishment and advise you of it during the day.

Court will adjourn for lunch.

Mr. Holt: Please, before the Court adjourns, may we get the specificity on the part of the Court regarding what is considered in the pleading, if anything, contemptuous? I

think under the laws of the Commonwealth and United States we are in this position—that if something has been said which is contemptuous, there be elements of intent that should be present, and if the element of intent be present, and there are certain things which flow under it in terms—

The Court: I don't think that you need any specification or bill of particulars on that. I think that you can read it, Mr. Dawley can read it, and I think it is plain to the people who are in the courtroom that the remarks are contemptuous, and you summarily have been held in contempt of Court.

And Court stands adjourned at this time for lunch.

The Court: Next we have action of the Court on a motion for change of venue. Mr. Jones, do you wish to be heard on that?

Mr. Jones: No, your honor. I don't think there's any argument that I would present at this time.

I wholly concur with the Court that that is contemptuous, and I don't propose to answer it at all.

Mr. Holt: May we at this time, my client and I, ask again of the Court—the motion for jury trial—My understanding was that you denied this earlier.

The Court: I have not passed on the motion for jury trial at this time. I think that I would have to pass on the motion for change of venue before I would for a jury trial.

We first have to find out whether we are going to try it in this Court; and then we will determine whether or not it is a jury trial.

Denial of Motion for Change of Venue

If there is nothing further to be heard on the motion for change of venue, the Court is ready to rule on it.

Motion is denied.

[fol. 24] Mr. Holt: May we note an exception, sir.

The Court: Let the record show the exception.

Mr. Holt: May it please the Court, there is one matter which we would like to at this time call to the Court's attention out of an abundance of caution.

I have in my possession a yellow jacket containing certain papers labeled *Dawley versus Law Rule* obtained from the Clerk of the Circuit Court of the City of Hopewell, Mr. J. Hamilton Hening, and I call to the Court's correct attention that in addition to the other papers which are in the packet that there is a paper in there styled United States of America, In the District Court of the United States of the Eastern District of Virginia, Richmond, a suit entitled *E. A. Dawley, Jr.* v. *Carlton E. Holladay, et al.,* Civil Action Number 3414, and the caption to the paper is Amendment to Complaint and that at the end of the document which I have just described there is no notation as to when it was received (The last part of this sentence was not clear enough to transcribe.)

May the record also indicate that in the packet I have just described there is a document entitled In the Supreme Court of the United States, October Term 1961, *E. A. Dawley, Jr., petitioner,* v. *Carlton E. Holladay, respondent,* and the document is entitled Petition for stay of State Court proceedings pending appeal of District Court and Court of Appeals decision and for a temporary restraining order.

May it further indicate in the record that there is not appended at the end any date as to when it was received, but proof of service is attached to said document entitled as I have just described indicates that it was mailed by special delivery on the 28th day of January, 1962, from Norfolk, Virginia, and is properly notarized.

May the record also indicate that in back of the file there are two papers, one of which appears to be a carbon of the other and the title of it is Virginia, In the Circuit Court of the City of Hopewell, Virginia, *Tipton Yerby* v. *Arthur Phillip Clayton Yerby, III,* yet there is not a document on this (The rest of this sentence is not clear enough to transcribe.)

The Court: Now, what do you want the record to indicate —that they are in the file?

Mr. Holt: Yes, sir.

The Court: That they are properly in the file or improperly in the file?

Mr. Holt: I have no intention of being heard at this time.

May we also out of an abundance of caution—

[fol. 25] The Court: For what purpose is the recitation that you made?

Mr. Holt: If I may be permitted, sir, the purpose of the recitation is merely to get into the record the information that was recited.

The Court: May I ask this question? May I see those papers, as to what they are?

It appears that the case of *Yerby against Yerby* has nothing to do with this particular case.

With reference to the paper referred to as Amendment to Complaint, Civil Action 3414, In the United States District Court for the Eastern District of Virginia, that is one of the papers to which you referred?

Mr. Holt: I believe it is, sir.

The Court: Well, now, of course, the caption of this paper shows that it is in the United States District Court of the Eastern District of Virginia, at Richmond.

How did it get in the office of Mr. Hening?

Mr. Holt: I am not in a position to say. I don't know how it got in there.

The Court: You are not in a position to say how that got in Mr. Hening's office?

Mr. Holt: In answer to your question I have no—Your question was how did it get in the file.

The Court: No, how did it arrive in the Clerk's Office of the Circuit Court of the City of Hopewell?

How did it come to be here?

Mr. Holt: I cannot say, sir, how it came to be here at this particular time. I don't know.

The Court: Now, with reference to the paper which you referred to in the Supreme Court of the United States, October Term 1961, E. A. Dawley, Jr., against Carlton E. Holladay. Is that one of the papers that you referred to?

Mr. Holt: I believe so.

The Court: Do you know how that happened to get in the Clerk's Office of the Circuit Court of Hopewell?

Mr. Holt: I do not know how that happened to get into the court file at this time, sir.

The Court: I am talking about how it happened to get filed in the Clerk's Office of the Circuit Court of the City of Hopewell.

Do you know how it got in there?

Mr. Holt: At this point I would have to ask the Court the relativity of the inquiry.

[fol. 26] The Court: I just want to know how it got in there. You brought up the question about it being in the file. I am asking you whether or not you know how these papers got in there.

Mr. Holt: May I suggest to the Court, that since they're in the jacket, and I assume the jacket has been or was primarily in possession of the Clerk, that he be permitted to indicate how they got there, sir.

The Court: The Court is addressing its questions to you, and you have raised the question about these papers being in here.

And the first one, a Civil Action Number 3414, you state that you do not know how it got there.

The other one, the one in the United States Supreme Court, I am asking you at the present time not how it got in the jacket, but how it came to be in the Clerk's Office of the Circuit Court of the City of Hopewell.

Mr. Holt: I would again, if you would permit me, out of an adundance of caution, to merely refer to the relevancy of the matter, and I would like the relevancy explained, to ask that the directive be made to the Clerk, and I respectfully request that of his honor. And I say—Also, I think his honor misunderstood me.

He has used language on at least two occasions that I have raised some question, and I have not raised any question, and if the language that I used tended to suggest that I was raising a question, I now disavow raising any question.

The Court: Well, you called the Court's attention to the fact that these papers were in the file.

You made a recitation as to what papers were in the file, and the Court has asked you just how they came to be in

the Circuit Court of the City of Hopewell, the Clerk's Office of the Circuit Court of the City of Hopewell.

Just how did they come to be there?

Mr. Holt: My previous response still stands. I think, number one, that I would like to know the relevancy of—

The Court: The Court declines to give the relevancy.

You raised the question, and the Court asks you to answer the question.

Mr. Holt: Am I being directed to answer that question now?

The Court: Now, I want to ask that question, and I call your attention to the fact that the paper I am referring *yo* now is signed E. A. Dawley, Jr., by L. Holt counsel.

Are you L. Holt?

Mr. Holt: I am.

The Court: Did you mail that paper to the Clerk's Office?

[fol. 27] Mr. Holt: I believe I did.

The Court: All right. Be seated.

* * * * * * *

Mr. Holt: We would like to ask this of the Court in terms of the other two days. Number one, some matters have arisen today—There is certainly—We would like to request of the Court an opportunity number one, to know specifically what, within the document read, the Court considers contemptuous.

In order that we might do this, it is not our intent to be contemptuous, and we cannot in truth say that subjectively certain things are true, and we rather suspect that subjectively they are not true, but in terms of the objective manifestation it is felt that a fair inference should be drawn from them are the conclusions set forth in the motion for change of venue.

And I think that the Court will attempt to be fair and will once again, allow an opportunity to be made to respond to this.

I think that the Court, for example, right now I can say to the Court on behalf of both Mr. Dawley and myself that if perchance these statements viewed, which are in these documents—viewed objectively tend to be—I don't know

exactly what statements the Court has reference to—But whatever it is, assuming that objectively they tend to lend themselves to such a conclusion, we at this point would disavow any subjective intent, and to that extent would apologize to the Court.

But we feel that if this statement is made, and it has been made, that the intent was not to say that subjectively the conditions therein are absolutely true because of necessity to be able to say this subjectively we would have to know what is going on in the minds of various citizens in Hopewell.

When we don't know subjectively because we were not in their minds and have not been in their minds at the times the various discretions have been made—So we at this point, without knowing what the statements are that are disturbing the Court; we will determine it a general document in terms to any extent that he feels that it is contemptuous of the Court, we say that our intent was not to be contemptuous; and if objectively this result is reached by just looking at them without going into our inward intent, we would say we apologize.

If this is the only conclusion to be drawn, but we say that the statements were made in the best of faith based upon a conclusion drawn from certain objective manifestations.

[fol. 28] Now we may be in error, but I ask the Court to also consider this—That in light of the seriousness—In the light of the seriousness of the contempt charge Mr. Dawley is placed in an awkward position because part of this proceeding involved many factors, and how does one state this?

If the stating of this is improper, we would welcome from the Court a suggestion as to how to restate the idea, so as not to be contemptuous, because this not our intent, and if you will say how this can be stated, the idea of a necessity for a change of venue can be re-stated without offending the citizens of Hopewell, we would be glad to state it.

The only thing we want in the record is that there is reason for a change of venue.

Now, if in our manner of saying it we inadvertently create an impression that we think subjectively the Court or the people or the Commonwealth's Attorney, or whoever else may be referred to there, Hopewell News, we disavow these intentions and we respectfully request of the Court to be allowed the opportunity if it wants us to deal with the specificity. We respectfully request of the Court an opportunity to respond specifically to certain statements and disavow any intent in certain statements to be contemptuous of the Court.

We point out that—That is our position. We respectfully request of the Court that this be done.

The other matter that is separate and apart from this, your honor—Will his honor rule on this request first?

(At this point the recording machine was apparently not in operation for a few moments.)

The Court certifies that the following occurred:

The Court read from the motion and pointed out, among other things therein, that both E. A. Dawley, Jr., and his counsel had said that the Court "is now in effect and/or in fact acting as police officer, chief prosecution witness, adverse witness for the defense, grand jury, chief prosecutor and judge."

The Court further pointed out that both parties had made the accusation that the Court had harassed and intimidated counsel for E. A. Dawley, Jr., viz., Leonard W. Holt.

The Court further pointed out the allegations in Paragraph (10) of the motion and called attention to the statement in the record that a fair and impartial trial could not be had in the Circuit Court of the City of Hopewell.

The Court pointed out the statement made and appearing [fol. 29] in the record that Mr. Holt's client, E. A. Dawley, Jr., could not get a fair and impartial trial applied to both trial before a jury and before the Court.

The Court then further pointed out the nature of the limited apology.

Whereupon and immediately before the Court fixed their punishment, both defendants tendered a general apology.

The Court then fined both E. A. Dawley, Jr., and Leonard W. Holt $50.00 each for the contempt of which they had been summarily attached and found guilty.

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL, VIRGINIA

JUDGE'S CERTIFICATE

I, Carlton E. Holladay, Judge of the Circuit Court of the City of Hopewell, do hereby certify that the foregoing is a correct and complete transcript of the testimony, facts and incidents of so much of the trial and proceedings against E. A. Dawley, Jr., in the Circuit Court of the City of Hopewell as pertain to and constitute a part of the proceeding wherein E. A. Dawley, Jr., and L. W. Holt were summarily adjudged to be in contempt of court, attached and fined on January 30, 1962.

And I further certify that Nancy W. Raiford was duly sworn as a court reporter and stenographer to faithfully, accurately and completely transcribe the record of said proceedings.

Given under my hand this 9th day of April, 1962.

Carlton E. Holladay, Judge of the Circuit Court of the City of Hopewell.

IN THE CIRCUIT COURT OF THE CITY OF HOPEWELL, VIRGINIA

In Re: E. A. DAWLEY, JR.

In Re: L. W. HOLT

ORDER—April 9, 1962

The above named parties having submitted to the Judge of this court an alleged statement of facts and incidents of trial; and having failed and refused to furnish this court or

the Supreme Court of Appeals the transcript of the evidence [fol. 30] and incidents of trial and procedures wherein said E. A. Dawley, Jr., and L. W. Holt were summarily adjudged to be in contempt of court, attached and fined $50.00 each, as recorded on the Dictaphone installed in and used in the courtroom pursuant to law. And the Court being of opinion that such transcription is necessary in order to certify an accurate statement of the oral testimony and incidents of the trial and procedure; and the Court being of further opinion that in this case the proposed statement of facts and incidents of trial can be amended and enlarged so as to furnish an accurate transcript of the oral testimony, facts and incidents of the trial by the transcription of such record, and that it is necessary and proper so to do; and further that due to the brevity of the record, the Court being able to procure an experienced Dictaphone operator so to do, it is Ordered that the dictabelts in this matter be delivered by the Clerk to Nancy W. Raiford who is hereby directed to faithfully and accurately transcribe so much of the record of the testimony and incidents of the trial and proceedings against E. A. Dawley, Jr., as pertain to E. A. Dawley, Jr., and L. W. Holt being adjudged in contempt of court on the 30th day of January, 1962.

And it is further Ordered that the cost of the transcript be and the same is hereby taxed as cost in this proceeding.

And the Clerk of this court is authorized to deliver a copy thereof to E. A. Dawley, Jr., and L. W. Holt upon their making payment to him of the cost of the transcription of the record in accordance with the stenographer's statement of account.

Entered this 9th day of April, 1962.

Carlton E. Hollaway, Judge.

H. G. Turner, Clerk.

[fol. 99]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA, RICHMOND

Record No. 5631

E. A. DAWLEY, JR., Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

Upon a writ of error and supersedeas to a judgment rendered by the Circuit Court of the City of Hopewell on the 30th day of January, 1962.

MANDATE—June 15, 1964

This day came as well the plaintiff in error, by counsel, as the Attorney General on behalf of the Commonwealth, and the court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the judgment complained of. It is therefore adjudged and ordered that the said judgment be affirmed, and that the plaintiff in error pay to the Commonwealth her costs by her expended about her defense herein.

Which is ordered to be forthwith certified to the said circuit court.

[fol. 100]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA, RICHMOND

Record No. 5630

L. W. HOLT, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

Upon a writ of error and supersedeas to a judgment rendered by the Circuit Court of the City of Hopewell on the 30th day of January, 1962.

MANDATE—June 15, 1964

This day came as well the plaintiff in error, by counsel, as the Attorney General on behalf of the Commonwealth, and the court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the judgment complained of. It is therefore adjudged and ordered that the said judgment be affirmed, and that the plaintiff in error pay to the Commonwealth her costs by her expended about her defense herein.

Which is ordered to be forthwith certified to the said circuit court.

[fol. 101]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA, RICHMOND

Record No. 5630

L. W. HOLT,

—v.—

COMMONWEALTH OF VIRGINIA.

Record No. 5631

E. A. DAWLEY, JR.,

—v.—

COMMONWEALTH OF VIRGINIA.

From the Circuit Court of the City of Hopewell, Carlton E. Holladay, Judge.

OPINION BY JUSTICE KENNON C. WHITTLE—
June 15, 1964

Present: Eggleston, C.J., Spratley, Buchanan, Whittle, Snead, I'Anson, JJ.

These cases are before the court upon separate writs of error awarded appellants Holt and Dawley to judgments entered against them in the Circuit Court of Hopewell on the 30th day of January, 1962, wherein they were summarily held to be in contempt of court and fined $50.00 each.

The following material facts are disclosed:

On January 30, 1962, the Circuit Court of the City of Hopewell had before it a contempt citation against Dawley, which grew out of Dawley's conduct in the trial of

a law suit then pending, styled *Hopewell News* v. *Curtis Harris et al.* Dawley was represented in this contempt proceeding by L. W. Holt, his law partner.

[fol. 102] The question before the court at the time involved a motion "for change of venue" which had been signed by Dawley and filed on January 17, 1962. The motion for the change of venue was read to the court and argued by Holt, Dawley's attorney.

It will be noted that the present contempt action against Holt and Dawley arose out of the motion for change of venue filed in the (first) contempt action against Dawley. In this connection the following occurred:

> "The Court: I believe you have a plea filed here for change of venue?
>
> "Mr. Holt: Yes sir.
>
> "The Court: I am ready to hear you on that.
>
> "Mr. Holt: May it please the court, the defendant, E. A. Dawley, Jr., represents as follows on a motion for change of venue * * * ".

Here attorney Holt proceeded to read the long and involved written motion for the change of venue, which motion contained the following:

> " * * * [T]hat the said Honorable Judge Carlton E. Holladay who presided in the libel suit [Hopewell News v. Curtis Harris, et al.] and who now fails and refuses to disqualify himself as judge in the contempt trial of the defendant, E. A. Dawley, Jr. has with respect to said contempt action, and is now in effect and/or in fact acting in the capacity of police officer, chief prosecution witness, adverse witness for the defense, grand jury, chief prosecutor and judge; that in addition to the foregoing the said Judge Carlton E. Holladay did intimidate and harass the lawyer representing E. A. Dawley, Leonard W. Holt, Esquire, the effect of which is to seriously hamper the efforts of said Leonard W. Holt in defending the said E. A. Dawley, Jr.; that

said harassment and intimidation arises out of and is [fol. 103] connected solely with Leonard Holt's participation in the defense of E. A. Dawley in the contempt action; that part of the harassment and intimidation occurred at the hearing in this matter on January 8, 1962, at which time the court revealed that it had been making an independent investigation and inquiry of Mr. Holt's conduct and of the contempt offense. The Judge said that he would deal with Leonard Holt after he had dealt with E. A. Dawley. * * * *"*

After attorney Holt had read the motion for change of venue, embracing the above quoted words, and had argued the same, the following colloquy occurred between the court and counsel:

"The Court: As I understand it, you have filed a copy of the motion you substantially made in the record in the case here. I believe you read from that?

"Mr. Holt: That is correct.

"The Court: And it is signed by Mr. Dawley?

"Mr. Holt: That is correct, sir.

"The Court: Under his affidavit, and you appeared, of course, as representing Mr. Dawley in the matter here today?

"Mr. Holt: I don't understand the nature of the question, sir.

"The Court: I notice that the pleading was filed apparently in person rather than by you as counsel.

"Mr. Holt: Well, it was signed by him. I think we have this situation, and the Court is well aware that he, under the Constitution of the United States, and Virginia, has the right to sign pleadings in his own behalf.

"The Court: I was just merely asking—I saw it was signed by him there and not signed by you as counsel, but you appeared here today as counsel.

"Is that correct? You have argued the motion, I understood that you appeared as counsel.

"Mr. Holt: I think that's what I have done, sir. It's before the Court.

"The Court: Before the Court. May I ask a further question here.

"You have read, of course, that he cannot get a fair and impartial trial.

[fol. 104] "Of course, the issue is still pending as to whether or not he will be tried by jury or by the Court. Do you wish to elaborate on that? I'm not asking that you do. I just want to know what you— • • • . If you want to elaborate on it, I would like to give you an opportunity. If you don't, that is perfectly all right.

"Mr. Holt: I'm not— May I respectfully— You see — Elaborate on it yet— I have some trouble hearing sometimes, sir.

"The Court: On the motion for change of venue, does that apply whether your client would be tried before a jury or before the Court? Does it apply in both cases?

"Mr. Holt: We say it would apply."

• • • • • • •

"[Court] At this time I might say that I do not see how this Court can pass unnoticed the matters and things that have been presented (sic) to the Court by Mr. Dawley in a plea filed in the Court and presented here in Court and by Mr. Holt as his counsel and argued in court. I think that the plea is contemptuous and I think the argument is contemptuous.

"At this time both E. A. Dawley, Jr., and Leonard W. Holt are held and adjudged summarily to be in contempt of this Court.

"I will take under advisement the punishment and advise you of it during the day.

"Court will adjourn for lunch.

"Mr. Holt: Please, before the Court adjourns, may we get the specificity on the part of the Court regarding what is considered in the pleading, if anything, contemptuous? I think under the laws of the Common-

wealth and United States we are in this position—that if something has been said which is contemptuous, there be elements of intent that should be present, and if the element of intent be present, and there are certain things which flow under it in terms—

"The Court: I don't think that you need any specification or bill of particulars on that. I think you can read it, Mr. Dawley can read it, and I think it is plain to the people who are in the courtroom that the remarks are contemptuous, and you summarily have been held in contempt of court."

Following the citation for contempt, the court overruled the motion for the change of venue.

[fol. 105] Thereafter, Mr. Holt undertook to address himself to the question of contempt. In his long and rather incoherent argument, Holt insisted that the court point out the matters contained in the motion which were thought to be contemptuous.

Whereupon the court certified the proceedings which transpired as follows:

"The Court read from the motion and pointed out, among other things therein, that both E. A. Dawley, Jr., an[illegible] counsel had said that the Court 'is now in effect a [illegible] or in fact acting as police officer, chief prosecution witness, adverse witness for the defense, grand jury, chief prosecutor and judge'; that both parties had made the accusation that the Court had harassed and intimidated counsel for E. A. Dawley, Jr., viz., Leonard W. Holt; that paragraph (10) of the motion contained the statement that a fair and impartial trial could not be had in the Circuit Court of the City of Hopewell; that the record contained accusation that Mr. Holt's client, E. A. Dawley, Jr., could not get a fair and impartial trial applied to both trial before a jury and trial before the court. The

court then pointed out the nature of the limited apology."

Whereupon the court then fined both E. A. Dawley, Jr. and Leonard W. Holt $50.00 each for the contempt of which they had been summarily attached and found guilty.

While appellants have filed six assignments of error to the action of the trial court, there is only one essential question presented in this case, i.e., whether the motion for change of venue, and argument thereon, pr sented in open court on January 30, 1962, constituted contempt of court, warranting summary judgment. Stated differently, [fol. 106] the question is— Does the trial court possess the power to defend itself against abusive and contemptuous attack by party litigants and their counsel even though the attacks take the form of pleadings filed and argued in the proceeding? Here we must consider:

(1) The power of a court to punish for contempt;

(2) Whether the contemners' actions were contemptuous;

(3) Whether they purged themselves of that contempt, and

(4) Whether summary action was appropriate.

The power of the court to punish for contempt can no longer be challenged. Such power is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from the exercise of all other powers. Without such power the administration of the law would be in continual danger of being thwarted by the lawless. The power to fine and imprison for contempt is incident to every court of record. Such courts *ex necessitate rei* have the power of protecting the administration of justice with a promptitude calculated to meet the exigency of the particular case. The right of punishing contempt by summary conviction is a necessary attribute of judicial power. See *Commonwealth* v. *Dandridge* (1824), 2 Va. Cas.

[fol. 107] (4 Va.) 408; 4 M.J., Contempt, Sec. 5, pages 244-245.

> "That the English courts have exercised the power in question from the remotest period does not admit of doubt. Said Chief Justice Wilmot: 'The power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution; it is a necessary incident to every court of justice, whether of record or not, to fine and imprison for a contempt acted in the face of the court; and the issuing of attachments by the Supreme Court of Justice in Westminster Hall for contempts out of court, stands on the same immemorial usage which supports the whole fabric of the common law; it is as much the *lex terrae*, and within the exception of Magna Charta, as the issuing of any other legal process whatsoever.'"

Carter v. *Commonwealth*, 96 Va. 791, 806, 807, 32 S.E. 780; 3 Campbell's Lives of Chief Justices, 153; *United States* v. *Hudson*, 7 Cranch (11 U.S.) 32, 3 L. ed. 259; *Wells* v. *Commonwealth*, 21 Gratt. (62 Va.) 500.

The ingrained principles above recorded had their origin in the genesis of the court itself, having been settled long before the founding of this country. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of the power to protect themselves and the dignity and authority of the court. *Ex parte Robinson* (Ark.), 86 U.S. (19 Wall.) 505, 22 L. ed. 205.

One of the earliest, if not the earliest, United States cases was decided in 1788. This involved a contempt citation against a newspaper, the style of the case being *Respublica* [fol. 108] v. *Oswald*, 1 U.S. (1 Dall.) 319, 1 L. ed. 155, 1 Am. Dec. 246. There, the Chief Justice had this to say:

> "Having yesterday considered the charge against you, we were unanimously of opinion, that it amounted to a contempt of the Court. Some doubts were suggested,

whether even a contempt of the Court was punishable by attachments; but, not only my brethren and myself, but, likewise, all the judges of *England*, think, that without this power no Court could possibly exist;—nay, that no *contempt* could, indeed, be committed against us, we should be *so truly contemptible*. The law upon the subject is of immemorial antiquity; and there is not any period when it can be said to have ceased, or discontinued. On this point, therefore, we entertain no doubt."

See *Board of Supervisors* v. *Bazile*, 195 Va. 739, 80 S.E. 2d 566, 12 Am. Jur., Contempt § 3, at page 390, 17 C.J.S. § 8, page 16, et seq.

We next consider the question, was contemners' attack upon the trial court contemptuous, warranting summary punishment?

We hold that it was. When one considers the incidents surrounding the motion for change of venue, the affidavit and argument thereon, it would be difficult to imagine a more callous attack upon a court by an attorney who is privileged to practice his profession therein. The language employed was both contemptuous and contemptible. It was intended to be insulting. The motion for change of venue was simply used as a vehicle to heap insults upon the court, a studied attempt to smear the judge. 12 Am. Jur., Contempt, *supra*, § 11, page 396. He was charged with:

(1) Acting as police officer, chief prosecution witness, ad-[fol. 109] verse witness for the defense, grand jury, chief prosecutor, and judge;

(2) Harassing and intimidating counsel for the accused;

(3) Being unable to conduct a fair and impartial trial.

It would strain one's imagination to picture a clearer example of contempt, either at common law or under the statute. However, it is unnecessary to consider whether the conduct of the appellants would warrant summary punishment at common law. Their offense comes within the purview of Section 18.1-292 of the Code of Virginia 1950 as

amended. That section prescribes the instances in which the court may punish summarily for contempt. It reads in part as follows:

> "The courts and judges may issue attachments for contempt, and punish them summarily, only in the cases following:
>
> "(1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;
>
> * * * * * * *
>
> "(3) Vile, contemptuous or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding;
>
> "(4) Misbehavior of an officer of the court in his official character."

We thus have the very narrow question of whether the [fol. 110] motion for change of venue, with affidavit attached, together with the argument thereon, constitutes an offense within the meaning of the statute.

Both appellants are attorneys. They are officers of the court. It was their duty as attorneys to maintain the respect due the court; a duty imposed upon them which clearly should exceed that imposed upon the public generally. This duty should not be looked upon lightly and cannot be shirked under the guise of representing the interests of a party litigant. The attorney's privilege to appear in court is not a license to attack the court; nor does the privilege of filing pleadings and motions grant a license to insult, abuse and slander the court, however unhappy the client and attorney may be with the particular court. See numerous cases annotated on this point in 18 A.L.R. 213; 55 A.L.R. 530; 52 A.L.R. 2d 1297. See also Dangel "Contempt", § 118, at page 58; 12 Am. Jur., Contempt, *supra*, § 13, at pages 397-398.

The statutory authority for change of venue in criminal cases in Virginia is codified as § 19.1-224 of the Code and we cannot believe that the motion for a change of venue in the [first] contempt case against Dawley [for his alleged actions in interfering with the process of the court] was [fol. 111] addressed, in good faith, to the sound discretion of the trial court under that statute. We have been referred to no statute in Virginia which would require a judge to disqualify himself in a contempt proceeding.

Even if there existed grounds for compelling disqualification of the trial judge in such proceeding, it is well settled that a motion directed to that ground must confine itself to pertinent facts relied upon to establish the ground. The written motion cannot be used as a vehicle for launching a personal attack upon the integrity or honor of the court. 12 Am. Jur., Contempt, *supra,* § 13, page 398; 29 A.L.R. 1273.

We further hold that the contempt was not purged by the supposed disclaimer of intent by these appellants. Nowhere is it pointed out by appellants wherein they attempt to purge themselves of contempt. The record discloses that in addressing the court Holt said this:

> "And I think that the Court will attempt to be fair and will once again allow an opportunity to be made to respond to this.
>
> "I think that the Court, for example, right now I can say to the Court on behalf of both Mr. Dawley and myself that if perchance these statements viewed, which are in these documents—viewed objectively tend to be—I don't know exactly what statements the Court has reference to— But whatever it is, assuming that objectively they tend to lend themselves to such a conclusion, we at this point would disavow any subjective intent, and to that extent would apologize to the Court.
>
> [fol. 112] "But we feel that if this statement is made, and it has been made, that the intent was not to say that subjectively the conditions therein are absolutely

true because of necessity to be able to say this subjectively we would have to know what is going on in the minds of various citizens in Hopewell.

"When we don't know subjectively because we were not in their minds and have not been in their minds at the times the various discretions have been made—So we at this point, without knowing what the statements are that are disturbing the Court, we will determine it a general document in terms to any extent that he feels that it is contemptuous of the Court, we say that our intent was not to be contemptuous; and if objectively this result is reached by just looking at them without going into our inward intent, we would say we apologize. * * * "

These unintelligible remarks consume several pages of the record, and we cannot gather from what the attorney says that he is in any way attempting in good faith to apologize.

The general rule is that when contemptuous language is used in a pleading, disclaimer of intentional disrespect will not purge the attorney filing the pleading of contempt. See Dangel "Contempt", § 118, page 58, *supra.* See also *People* v. *Sherwin,* 334 Ill. 609, 166 N.E. 513; 29 A.L.R. 1268; *Redman* v. *State,* 28 Ind. 205; *Mahoney* v. *State,* 33 Ind. App. 655, 72 N.E. 151, 104 Am. St. Rep. 276; 12 Am. Jur., § 73, at page 439.

It is clear to us that no degree of apology or disclaimer of intent could purge these appellants of the shocking attack upon the integrity and honor of the trial court. In this con- [fol. 113] nection we cannot overlook the fact that the trial court had the opportunity to observe the defendants at the time of the so-called apology, and even if words of atonement could wipe out the express and unmistakable slander and personal attack upon the judge, only he was in a position to determine the sincerity of the words of atonement. *Saunders* v. *Commonwealth,* 186 Va. 1000, 1010, 45 S.E. 2d 307; *Board of Supervisors* v. *Bazile, supra,* 195 Va. 739, 745, 80 S.E. 2d 566; *Carter* v. *Commonwealth, supra,* 96

Va. 791, 802, 803, 32 S.E. 780; 17 C.J.S., Contempt, *supra*, § 8, page 21.

Lastly, appellants have sought to inject into this proceeding the suggestion that their constitutional rights are impinged upon by the summary manner in which the trial court called them to task.

Their arguments are devoted to a dissertation on questions which do not exist in this case and, even if present, have long been settled. The conduct for which they are being punished was a direct and open criminal contempt of court and as such was punishable summarily by the court when committed. No constitutional guaranties relating to indictment, rights to counsel, and trial by jury are here involved, and appellants' effort to raise these questions indicates either a lack of knowledge of the established law, [fol. 114] or a novel attempt to avoid the force of the doctrine of *stare decisis* on a point where the law has been settled for hundreds of years.

In *Local 333B, United Marine Division of I.L.A. (A.F.L.)* v. *Commonwealth*, 193 Va. 773, 71 S.E. 2d 159, it is said:

> "(1) Proceedings for contempt of court are of two classes,—those prosecuted to preserve the power and vindicate the dignity of the court and those to preserve and enforce the rights of private parties. The former are criminal and punitive in their nature; the latter are civil, remedial and coercive in their nature, and the parties chiefly interested in their conduct and prosecution are those individuals for the enforcement of whose private rights and remedies the original suit was instituted. *Roanoke Water Works Co.* v. *Roanoke Glass Co.*, 151 Va. 229, 144 S.E. 460; *Deeds* v. *Gilmer*, 162 Va. 157, 261, 174 S.E. 37; *Drake* v. *National Bank of Commerce*, 168 Va. 230, 190 S.E. 302, 109 A.L.R. 1517; *Gloth* v. *Gloth*, 158 Va. 98, 163 S.E. 351; • • • 4 Michie's Jur., Contempt, sec. 3, p. 242; 12 Am. Jur., Contempt, sec. 6, p. 392." *Gompers* v. *Bucks Stove, etc. Co.*, 221 U.S. 418, 441, 31 S. Ct. 492, 55 L. ed. 797, 34 L.R.A. (N.S.) 874; *Bessette* v. *Conkey Co.*, 194 U.S. 324, 329, 24 S. Ct. 665, 48 L. ed. 997.

The suggestion that appellants were entitled to a trial by jury is fully answered in the recently decided case (April 6, 1964) of *United States* v. *Barnett*, —— U.S. ——, 84 S. Ct. 984, 12 L. ed. 2d 23. In the majority opinion written by Mr. Justice Clark it is said:

> "Finally, it is urged that those charged with criminal contempt have a constitutional right to a jury trial. This claim has been made and rejected here again and again. Only five years ago we held a full review of the issue in Green v. United States, 356 U.S. 165 (1958). We held there that '[t]he statements of this Court in a long and unbroken line of decisions involving contempts ranging from misbehavior in court to disobedience of [fol. 115] court orders establish beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right.' At 183. Nor can it be said with accuracy that these cases were based upon historical error. It has always been the law of the land, both state and federal, that the courts—except where specifically precluded by statute—have the power to proceed summarily in contempt matters."

> "And in Eilenbecker v. District Court, 134 U.S. 31 (1890), a contempt was based on the violation of a court order. Mr. Justice Miller said: 'If it has ever been understood that proceedings, according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it. It has always been one of the attributes —one of the powers necessarily incident to a court of Justice—that it should have this power of vindicating its dignity, of enforcing its orders, of protecting itself from insult, without the necessity of calling upon a jury to assist it in the exercise of this power.' At page 36."

See also *In re Debs*, 158 U.S. 564, at pages 594 and 595, 15 S. Ct. 900, 39 L. ed. 1092; *United States* v. *Shipp*, 203 U.S. 563, 27 S. Ct. 165, 51 L. ed. 319.

It is evident that no constitutional rights of these appellants have been violated. Clearly, they were not entitled to trial by jury in this contempt proceeding. And there is nothing of record which shows any deprivation of appellants' right to be tried by an unbiased and impartial judge. The hearing afforded appellants in this instance satisfied all requirements of due process. See *Ungar* v. *Sarafite*, —— U.S. ——, 84 S. Ct. 841, 11 L. ed. 2d 921 (decided March 30, 1964); *Nilva* v. *United States*, 352 U.S. [fol. 116] 385, 77 S. Ct. 431, 1 L. ed. 2d 415; *Tumey* v. *Ohio*, 273 U.S. 510, 47 S. Ct. 437, 71 L. ed. 749, 50 A.L.R. 1243.

For the reasons stated[1] the judgment of the Circuit Court of the City of Hopewell is

Affirmed

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[1] For other cases and texts of interest see:

Sacher v. *United States*, 343 U.S. 1, 72 S. Ct. 451, 96 L. ed. 717.

Cartwright's case, 114 Mass. 230, at page 238.

Gompers v. *Bucks Stove Co.*, 221 U.S. 418, *supra*.

Ex parte Savin, 131 U.S. 267, at 277, 9 S. Ct. 699, 33 L. ed. 150.

Ex parte Terry, 128 U.S. 289, at page 309, 9 S. Ct. 77, 32 L. ed. 405.

4 Blackstone's Com. 286.

Dangel "Contempt" § 445, page 205; § 449, pages 212 and 213 and cases there cited.

[fol. 117]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA, RICHMOND

Record No. 5631

E. A. DAWLEY, JR., Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

ORDER STAYING EXECUTION OF JUDGMENT—June 17, 1964

Upon consideration of the application of the plaintiff in error, by counsel, praying for a stay of execution of the judgment entered herein on June 15, 1964, in order that he may have reasonable time and opportunity to present to the Supreme Court of the United States a petition for a writ of certiorari to review the judgment of this court, it is now ordered that the execution of enforcement of the judgment of this court in the above-styled case entered on June 15, 1964, be, and the same is hereby, stayed, until the 14th day of September, 1964, on the expiration of which time the same may be enforced unless the case has been before that time docketed in the Supreme Court of the United States, in which event enforcement thereof shall be stayed until the final determination of the case by that court.

The above stay, however, is not to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

[fol. 118]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA, RICHMOND

Record No. 5630

L. W. HOLT, Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA, Defendant in error.

ORDER STAYING EXECUTION OF JUDGMENT—June 17, 1964

Upon consideration of the application of the plaintiff in error praying for a stay of execution of the judgment entered herein on June 15, 1964, in order that he may have reasonable time and opportunity to present to the Supreme Court of the United States a petition for a writ of certiorari to review the judgment of this court, it is now ordered that the execution and enforcement of the judgment of this court in the above-styled case entered on June 15, 1964, be, and the same is hereby, stayed, until the 14th day of September, 1964, on the expiration of which time the same may be enforced unless the case has been before that time docketed in the Supreme Court of the United States, in which event enforcement thereof shall be stayed until the final determination of the case by that court.

The above stay, however, is not to discharge the petitioner from custody, if in custody, or to release his bond if out of bail.

[fol. 119]

SUPREME COURT OF THE UNITED STATES

No. 464—October Term, 1964

L. W. HOLT, et al., Petitioners,

vs.

VIRGINIA.

ORDER ALLOWING CERTIORARI—January 18, 1965

The petition herein for a writ of certiorari to the Supreme Court of Appeals of the Commonwealth of Virginia is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

PETITION FOR A WRIT OF CERTIORARI

Office-Supreme Court, U.S.
FILED
SEP 8 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 4641

L. W. HOLT and E. A. DAWLEY, JR.,

Petitioners,

versus

COMMONWEALTH OF VIRGINIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. .....

L. W. HOLT and E. A. DAWLEY, JR.,

Petitioners,

versus

COMMONWEALTH OF VIRGINIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

Petitioners, L. W. Holt and E. A. Dawley, Jr., respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia, entered on June 15, 1964, affirming the judgment of the Circuit Court of the City of Hopewell, Virginia, entered on January 30, 1962, which summarily convicted them of contempt and fined them $50.00 each.

Opinions Below

The opinion of the Supreme Court of Appeals of Virginia is reported at —— Va. ——, 136 S. E. 2d 809, styled *L. W. Holt* v. *Commonwealth of Virginia* (Record No. 5630), *E. A. Dawley, Jr.* v. *Commonwealth of Virginia* (Record No. 5631). A copy of this opinion is attached in the Appendix hereto.

The judgment of the Circuit Court of the City of Hopewell, which is unreported, appears in the record (R. 9-10)[1] and is also reproduced in the Appendix hereto.

Jurisdiction of This Court

1. The judgment of the Supreme Court of Appeals of Virginia was rendered and entered on June 15, 1964. That court granted a stay of execution on June 17, 1964 pending the timely filing of a petition to this Court for a writ of certiorari.

2. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3).

Questions Presented for Review

1. Whether a summary conviction for contempt by a state court violates the due process clause of the Fourteenth Amendment where the conviction is based solely upon pertinent allegations made in a motion for change of venue in pending proceedings, and where the contemnors, petitioners herein, are respectively the lawyer who presented and argued the motion and the party on whose behalf the motion was made.

2. Whether a summary contempt conviction violates the due process clause of the Fourteenth Amendment where it clearly is but one episode in a persistent history of harassment to which petitioners, both Negro lawyers, have been subjected in connection with their representation of citizens attempting to enforce constitutionally guaranteed rights in Virginia.

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[1] The symbol "R" refers to the printed Record on Appeal to the Supreme Court of Appeals of Virginia, Record Nos. 5630, 5631, which is part of the record here.

Statute Involved

This petition involves Code of Virginia (1950) as amended, Sec. 18.1-292 which reads in material part as follows:

> "The courts and judges may issue attachments for contempt, and punish them summarily, only in the cases following:
>
> "(1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;
>
> . . . . .
>
> "(3) Vile, contemptuous or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding;
>
> "(4) Misbehavior of an officer of the court in his official character."

Statement of the Case

Petitioners are both Negro members of the Virginia Bar, and partners in the former law firm of Jordan, Dawley & Holt, Norfolk, Virginia. In October, 1961 Dawley represented the defendants in a libel suit styled *Hopewell News, Inc.* v. *Curtiss Harris et al.* which was tried in the Circuit Court of the City of Hopewell, Virginia, presided over by Judge Carlton E. Holladay (R. 13). Immediately after the suit was dismissed, Judge Holladay asked Dawley a question concerning the unavailability of certain defendants for whose appearance subpoenas had been issued. Dawley

did not then answer the question. Judge Holladay issued a rule to show cause why Dawley should not be held in contempt of court for his refusal to answer the question (R. 13-14). Before the hearing date, Dawley filed a motion requesting Judge Holladay to disqualify himself from the contempt hearing (R. 14). When this motion was denied, Dawley filed a motion for a change of venue for the contempt hearing (R. 14).

The contempt trial came on for hearing before Judge Holladay on January 30, 1962. Holt appeared as counsel for Dawley, who was also present. Judge Holladay indicated he was ready to hear the motion for change of venue. Thereupon Holt read and argued the motion (R. 14, 18-22).

Before ruling on the motion, Judge Holladay summarily held Holt and Dawley in contempt of court, solely because of the contents of the motion and the oral argument by Holt in support thereof (R. 23). The judge certified (R. 28-29) that the following occurred:

> "The Court read from the motion and pointed out, among other things therein, that both E. A. Dawley, Jr. and his counsel had said that the Court 'is now in effect and/or in fact acting as police officer, chief prosecution witness, adverse witness for the defense, grand jury, chief prosecutor and judge.'
>
> "The Court further pointed out that both parties had made the accusation that the Court had harassed and intimidated counsel for E. A. Dawley, Jr., viz., Leonard W. Holt.
>
> "The Court further pointed out the allegations in Paragraph (10) of the motion and called attention to the statement in the record that a fair and impartial trial could not be had in the Circuit Court of the City of Hopewell.

"The Court pointed out the statement made and appearing in the record that Mr. Holt's client, E. A. Dawley, Jr., could not get a fair and impartial trial applied to both trial before a jury and before the Court.

"The Court then further pointed out the nature of the limited apology.

"Whereupon and immediately before the Court fixed their punishment both defendants tendered a general apology.

"The Court then fined both E. A. Dawley, Jr. and Leonard W. Holt $50.00 each for the contempt of which they had been summarily attached and found guilty."

The Supreme Court of Appeals of Virginia, in affirming the conviction, found that petitioners' conduct, as described in the judge's certificate, *supra*, came within the purview of Section 18.1-292 of the Code of Virginia (1950) as amended (App. p. 23).

In view of the summary nature of the contempt conviction, it was impossible for petitioners to raise any federal questions, or to interpose defenses of any kind, before being convicted. Petitioners raised the federal questions in their petition for writ of error to the Supreme Court of Appeals of Virginia, a copy of which was subsequently accepted as their brief in that court.

The opinion of the Supreme Court of Appeals of Virginia explicitly passed upon and rejected the federal constitutional claims raised by petitioners (App. pp. 27-29).

The nature of the case at bar requires a brief mention of certain related circumstances.

The law firm of Jordan, Dawley & Holt, in which petitioners were partners, frequently represented clients at-

tempting to enforce constitutionally guaranteed rights in Virginia and other southern states. The nature of the firm's practice was noted in *Jordan* v. *Hutcheson*, 323 F. 2d 597 (CA 4, 1963) in which the United States Court of Appeals for the Fourth Circuit considered an appeal from the dismissal of a complaint filed by the partners in the above-mentioned law firm against state officers under the Civil Rights Acts, 42 U. S. C. Secs. 1981 and 1983. The complaint alleged that the defendants were conspiring to intimidate, discourage and impede the plaintiffs and all Negro citizens of Virginia from using the courts as a means of ending racial discrimination in that state, and that certain Virginia officials had: investigated the friends and clients of plaintiffs; urged and asked their clients to abandon them; raided the offices of plaintiffs and their clients seeking to gather confidential papers and notes; published statements naming plaintiffs as violators of the law.[2]

The incident which precipitated the *Jordan* case occurred on September 17, 1961. 323 F. 2d at 599. Just three weeks later, on October 5 and 6, 1961, petitioner Dawley appeared before Judge Holladay in the Circuit Court of the City of Hopewell as counsel for the defendants in *Hopewell News, Inc.* v. *Curtiss Harris et al.*, in which a local newspaper claimed $45,000.00 damages for libel against several leaders of the Hopewell, Virginia civil rights movement (R. 19-20). It was petitioner Dawley's conduct in the *Hopewell News* case which was at issue in the hearing on January 30, 1962 on the show cause order; it was the conduct of petitioners Dawley and Holt at the January 30, 1962 hearing which resulted in the summary contempt conviction in issue here.

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[2] The surrounding circumstances are described more fully in Scott, Virginia Justice: If You Can't Get the Law, Get the Lawyer, The Nation, January 20, 1962, p. 51.

REASONS FOR GRANTING THE WRIT

I.

The conviction of petitioners for contempt, based solely upon the contents of a motion for a change of venue, denied a state court litigant the right guaranteed by the due process clause of the Fourteenth Amendment to be prosecuted in an impartial forum, and denied the litigant's attorney the right to represent his client effectively.

This Court has made it clear that a state court litigant's right to a change of venue in order to be tried in an impartial forum is a right of constitutional dimension guaranteed by the due process clause of the Fourteenth Amendment. *Rideau* v. *Louisiana*, 373 U. S. 723; *Irvin* v. *Dowd*, 366 U. S. 717.[3] The right to move for a change of venue is embodied in the procedures of both the federal and the Virginia courts.[4] A party cannot be punished for filing such a motion, nor can his lawyer be penalized for arguing it.

The lawyer's duty to practice his profession is a necessary corollary to his client's right to the effective assistance of counsel. Interference with performance of the

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[3] *Rideau* and *Irvin* both involved jury trials. Where a motion for change of venue is made in a non-jury trial, it may be considered tantamount to a motion for disqualification of the judge. This characterization, however, should make no difference to the principles involved. The right to have a judge disqualified is recognized in the procedures of both the federal and the Virginia courts. 28 U. S. C. Sec. 144; Code of Virginia (1950) as amended, Sec. 19.1-7. Moreover this Court has given constitutional stature to the right in state proceedings. *Re Murchison*, 349 U. S. 133.

[4] Federal Rules of Criminal Procedure, Rule 21 (a); Code of Virginia (1950) as amended, Sec. 19.1-224; Rules of the Supreme Court of Appeals of Virginia, Rule 1:8.

lawyer's professional duty not only abridges the lawyer's right to practice his profession and his client's right to be assisted effectively by counsel; it impairs the rights of all those who turn to the courts as places of justice. As this Court stated in *Re McConnell*, 370 U. S. 230, 236:

> ". . . (I)t is . . . essential to a fair administration of justice that lawyers be able to make honest good-faith efforts to present their clients' cases. An independent judiciary and a vigorous, independent bar are both indispensable parts of our system of justice."

The courts must, of course, possess power to punish misconduct which obstructs the administration of justice.[5] But in the case at bar petitioners were clearly not guilty of such misconduct.[6] The language of the motion itself is

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[5] The contempt power of federal courts is provided in 18 U. S. C. Sec. 401; Federal Rules of Criminal Procedure, Rule 42. This contempt power may be exercised summarily only where court-disrupting misconduct occurs in the actual presence of the court, Rule 42 (a); *Re McConnell, supra; Offutt* v. *United States*, 348 U. S. 11, and provided the judge has not become personally embroiled with the contemnor. *Offutt* v. *United States, supra; Cooke* v. *United States*, 267 U. S. 517. The judge must disqualify himself if the alleged contempt involves disrespect to or criticism of himself. Rule 42 (b). Remarks made outside the courtroom about judges, more critical than those involved here, have been held not punishable as contempts. *Bridges* v. *California*, 314 U. S. 252; *Pennekamp* v. *Florida*, 328 U. S. 331; *Craig* v. *Harney*, 331 U. S. 367; *Re Sawyer*, 360 U. S. 622.

[6] This Court has set standards governing contempt convictions in federal courts. *Re McConnell*, 370 U. S. 230; *Offutt* v. *United States*, 348 U. S. 11; *Cooke* v. *United States*, 267 U. S. 517. The same standards have also been applied in contempt cases from state courts. *Ungar* v. *Sarafite*, 376 U. S. 575; *Re Green*, 369 U. S. 689; *Re Oliver*, 333 U. S. 257. These latter decisions strongly imply a constitutional rule that contempt proceedings in state courts should be governed by the same standards as in federal courts.

Clearly under federal court standards petitioners could not have been summarily convicted of contempt. If a federal judge had found the contents of the motion for a change of venue offensive,

obviously well within the perimeter of decorous pleading. It is substantially similar to Mr. Justice Rutledge's characterization of the Michigan one-man grand jury: "(I)t combines in a single official the historically separate powers of grand jury, committing magistrate, prosecutor, trial judge and petit jury." *Re Oliver*, 333 U. S. 257, 278. By summarily convicting petitioners of contempt, the judge was in effect punishing them for having filed and argued a legitimate motion for a change of venue.

Consequently this Court should grant certiorari in order to reaffirm the constitutional right of a lawyer to argue his client's cause effectively.

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he could have ordered the striking of the offensive portions of the pleading. *Hohensee* v. *Watson*, 188 F. Supp. 941, 943 (DC Pa. 1959), aff'd 283 F. 2d 950 (CA 3, 1960). Or if a federal judge considered contempt proceedings called for, he would be required to disqualify himself under Rule 42 (b) of the Federal Rules of Criminal Procedure, and proceed on notice.

Under Virginia law a judge also has the power to order the striking of offensive pleadings. *Carwile* v. *Richmond Newspapers*, 196 Va. 1, 82 S. E. 2d 588 (1954). A judge also has the obvious power to call counsel into chambers and administer a warning about the umbrage which has been taken.

However, in the case at bar the judge did not take any of these steps. The motion for a change of venue was filed with him well in advance of the hearing (R. 8-9) and we must presume he read it before the hearing commenced. Apparently appreciating that he could not proceed with a summary contempt conviction on the basis of a writing filed with the court, *Cooke* v. *United States*, 267 U. S. 517, the judge invited petitioner Holt, as counsel for the movant (petitioner Dawley), to recite and argue the motion in open court, and thereupon the judge summarily convicted both petitioners of contempt (R. 18-23). This form of judicial entrapment certainly precludes that "atmosphere of austerity which should especially dominate a criminal trial and which is indispensible for an appropriate sense of responsibility on the part of court, counsel and jury." *Offutt* v. *United States*, 348 U. S. 11, 17. *A fortiori*, the movant on whose behalf the motion was argued, and who sat silently through the whole proceeding, can scarcely be guilty of court-disrupting misconduct.

II.

Lawyers who habitually represent citizens attempting to enforce constitutionally guaranteed rights must not, on that account, be subjected to harassment in the form of summary contempt proceedings.

This case presents anew the problem of the lawyer who represents an unpopular cause.[7] Petitioners are both Negro lawyers who habitually represent civil rights litigants. Unfortunately, it is a matter of common knowledge that many communities in Southern States, including Virginia, display a deep-rooted and persistent hostility towards the civil rights movement, and especially against lawyers who express its legitimate ambitions.[8] Civil rights lawyers and their clients find themselves attempting to enforce constitutionally guaranteed rights in a community whose most influential members are often their most bitter adversaries.

In recent years frequent attempts have been made to suppress the activities of civil rights lawyers in Southern communities. The attempts often take the form of regulatory measures which, on their face, may appear salutary and impartial, but which in fact are aimed directly against the proponents of civil rights. In a recent case arising in Vir-

[7] See, e.g., Downs and Goldman, The Obligation of Lawyers to Represent Unpopular Defendants, 9 Howard L. J. 49 (1963); Symposium, The Right to Counsel and the "Unpopular Cause," 20 U. of Pitt. L. Rev. 725 (1959); Cheatham, A Lawyer When Needed (Columbia Univ., 1963); Rostow, The Lawyer and His Client, ABA Journal, January, 1962 and February, 1962.

[8] For expressions of hostility against petitioners herein for their general efforts on behalf of civil rights litigants, see, e.g., Report of the Committee on Offenses Against the Administration of Justice to the Governor and the General Assembly of Virginia (Senate Document No. 16, 1961), pp. 7-8; Scott, Virginia Justice: If You Can't Get the Law, Get the Lawyer, The Nation, January 20, 1962, p. 51; *Jordan* v. *Hutcheson*, 323 F. 2d 597 (CA 4, 1963).

ginia, this Court pierced the form of a state's purported attempt to regulate, found in substance an attempt to inhibit a constitutionally guaranteed activity, and granted relief to the lawyers and their clients. *N. A. A. C. P.* v. *Button*, 371 U. S. 415. See also *Gibson* v. *Florida Investigation Committee*, 372 U. S. 539; *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449; *Bates* v. *City of Little Rock*, 361 U. S. 516; *Shelton* v. *Tucker*, 364 U. S. 479; *Jordan* v. *Hutcheson*, 323 F. 2d 597 (CA 4, 1963). This Court has demonstrated that it will reject all measures, "no matter how sophisticated", which may be employed "in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights." *Louisiana ex rel. Gremillion* v. *N. A. A. C. P.*, 366 U. S. 293, 297. See also *Dombrowski* v. *Pfister*, 227 F. Supp. 556 (DC La. 1964), probable jurisdiction noted —— U. S. ——, 12 L. ed. 2d 745.

Unfortunately the judge who summarily adjudged petitioners in contempt in the case at bar displayed that he too was affected by the prejudice which gripped so many other members of the community. The summary contempt proceedings did not occur as an isolated event. Rather, they represent but one more episode in a long history of harassment, indulged in by many state officials and other members of the community as a means of opposing and inhibiting petitioners' activities. In view of the inflamed condition of the community at the time,[9] and with a frank recognition of the problems, the judge should have gladly disqualified himself or granted a change of venue. But he insisted on proceeding summarily. Justice did not "satisfy the appearance of justice." *Offutt* v. *United States*, 348 U. S. 11, 14.

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[9] In *Harris* v. *Virginia*, —— U. S. ——, 12 L. ed. 2d 1038 and *Allen* v. *Virginia*, 374 U. S. 93, this Court vacated and remanded unreported Virginia cases, the record of which indicates the conditions prevailing in Hopewell, Virginia.

We have made previous reference to the constitutional right of a lawyer to represent his client. In *Sacher* v. *United States*, 343 U. S. 1, while sustaining a contempt conviction on the facts presented, this Court added, id. at 13-14:

> ". . . this Court, if its aid be needed, will unhesitatingly protect counsel in fearless, vigorous and effective performance of every duty pertaining to the office of the advocate on behalf of any person whatsoever. But it will not equate contempt with courage or insults with independence."

And in *Re McConnell*, 370 U. S. 230, 236, the Court stated:

> "The argument of a lawyer in presenting his client's case strenuously and persistently cannot amount to a contempt of court so long as the lawyer does not in some way create an obstruction which blocks the judge in the performance of his judicial duty."

See also *Re Green*, 369 U. S. 689, *Cammer* v. *United States*, 350 U. S. 399.

Under the prevailing circumstances to which brief reference has been made herein (see, e.g., *Jordan* v. *Hutcheson*, *supra*) the summary contempt conviction must be viewed as punishing petitioners, not only for the events which took place in the courtroom on the occasion of the contempt, but also for being active civil rights lawyers. The conviction consequently operates as a judicially imposed impediment to the constitutionally guaranteed activities of petitioners and of the civil rights litigants they habitually represent.

This Court should grant certiorari so that it may warn judges in signal terms that community prejudices may not be carried to the Bench so as to obstruct the legitimate efforts of civil rights litigants and their lawyers.

CONCLUSION

In view of the considerations set forth above, we respectfully submit that this petition for a writ of certiorari should be granted.

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